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Legal Education, Feminist Epistemology, and the Socratic Method

Susan H. Williams*

I have been asked to comment on the papers presented by Judith Resnik and Deborah Rhode. Deborah and Judith have both demonstrated how certain elements of feminist theory would move us toward transformations of legal education, and of law practice as well. I would like to talk about the contribution made by another aspect of feminist theory: the feminist critique of mainstream epistemology.¹ First, I'll say a few words about how Deborah's and Judith's transformative goals rest on a feminist epistemology, and then I will turn to a more specific example of transformation. The Socratic method is perhaps the clearest expression of mainstream epistemological assumptions in traditional legal education. I'd like to explore whether a feminist Socratic method is possible and what it might look like.

As Judith has pointed out, perhaps the most basic change needed right now is to increase the number of women, particularly women of color, in positions of authority in the legal profession and to eliminate the discrimination they presently experience. The barriers to such transformation lie in many directions, but the most formidable one—which Judith identifies—is the difficulty we have in hearing the deepest challenges posed to our system of justice. For example, the pervasive and deep-rooted discrimination documented by gender bias task forces should cause a massive crisis of confidence, but instead such reports seem only to ripple the surface of our cheerful optimism about the fundamental goodness of our social and legal order.

Judith has explored a number of explanations for this persistent cheerfulness, ranging from the conservative influence of law and economics to feminists' desire to use the optimism of the conventional view as a lever for change. I would like to suggest that there is also an epistemological reason for this resistance, a reason that will require an epistemological response. As Judith points out, it is possible, indeed it has become increasingly easy, for

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1. By "mainstream epistemology" I mean the Cartesian tradition, in which an external and objective reality is available to individual knowers through the use of their reason (perhaps combined with their sense perceptions) and in which the knowledge thus attained is universal and neutral. See Alison Jagger & Susan Bordo, *Introduction to GENDER/BODY/KNOWLEDGE* 1, 3 (Alison Jagger & Susan Bordo eds., 1989). For a full description of Cartesianism and the feminist epistemological critique, see Susan H. Williams, *Feminist Legal Epistemology*, 8 *BERKELEY WOMEN'S L.J.* 401 (1993).

the guardians of the legal profession to admit that they are failing to live up to their own ideal of neutrality. What is not so easy is to see that that failure is an inevitable result of the ideal itself. A neutrality that attempts to ignore differences in a world characterized by hierarchy will generate social inequality.² And a neutrality that ignores inequality is not neutral.³

This deeper criticism is too threatening to be acknowledged because it calls into question not just a single legal ideal, but an entire epistemological edifice. The traditional epistemological view that animates our legal system—and is also shared by a broad range of our social institutions—requires that knowledge be a neutral, universally valid, objective description of an independent reality. The feminist critique points out that that sort of neutrality is impossible because knowledge is always constructed within a particular social context and deeply permeated by it. Our knowledge cannot transcend our values and cultural concepts, rather it is grounded in them.⁴ If the very concept of neutrality is incoherent, then the foundation of all of our knowledge may be called into question. This deeper challenge posed by the work of gender bias task forces, among others, is a challenge to the very idea of neutrality and to the theory of knowledge that depends upon it. It may be difficult to hear that challenge until we have some alternative epistemological position in which to stand and from which to assess this crack in the foundation of mainstream epistemology.⁵

Deborah's paper focuses on the internal dynamics of American law schools. She criticizes both the style and substance of contemporary legal education from a feminist point of view. She finds the pedagogy to be often hierarchical and authoritarian, emphasizing student's inadequacies and encouraging counterproductive competitiveness. The content of law school

2. This is one of the great lessons of the "difference" feminists: Ignoring differences can simply magnify existing inequalities. For example, a "neutral" standard that asks all workers to meet certain levels of attendance, regardless of gender, exacerbates gender inequality rather than relieving it because women's greater responsibilities for child rearing in our culture make them, on average, less able to meet such standards than men. See Christine Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1304-08 (1987).

3. Or, to put it another way, it is difficult to see the value in such neutrality. The reason for pursuing neutrality was to ensure that irrelevant characteristics did not bias a decision. But if those characteristics are simply being imported at an earlier stage in the process, then this type of neutrality loses much of its appeal. Would we think very highly of a neutral race in which all start and end at the same lines, but some begin with ankle weights and others with Nikes?

4. This cultural grounding of knowledge occurs at several stages in knowledge formation, including defining a problem to study, see Sandra Harding, *Introduction: Is There a Feminist Method?*, in *FEMINISM AND METHODOLOGY* 1, 6 (Sandra Harding ed., 1987), defining the facts, see Ruth Hubbard, *Some Thoughts About the Masculinity of the Natural Sciences*, in *FEMINIST THOUGHT AND THE STRUCTURE OF KNOWLEDGE* 1 (Mary M. Gergen ed., 1988); Naomi Scheman, *Individualism and the Objects of Psychology*, in *DISCOVERING REALITY: PERSPECTIVES ON EPISTEMOLOGY AND METAPHYSICS* 225, 229 (Sandra G. Harding & Merrill B. Hintikka eds., 1983), and interpreting or analyzing data, see DRUCILLA CORNELL, *BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW* 30-31 (1991).

5. For suggestions about such an alternative position, see generally CORNELL, *supra* note 4 (developing a deconstructionist approach to feminist epistemology); SANDRA G. HARDING, *WHOSE SCIENCE? WHOSE KNOWLEDGE?* (1991) (developing a standpoint epistemology); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990) (developing "positionality" as an epistemological approach).

teaching also fails by being too acontextual, paying insufficient attention to the emotional and interpersonal aspects of legal practice, and neglecting ethical issues. Deborah suggests, and I agree, that these criticisms must be grounded in normative principles rather than in some essentialist vision of an alternative feminine way of doing things. I would simply like to point out that those normative principles both rest on and give rise to certain epistemological principles. Let me take Deborah's substantive criticisms as an example.

Deborah suggests that we need much more information about context in our teaching materials, and more attention in classroom discussion to the interpersonal and emotional aspects of cases. Legal training that neglects these aspects is often inhumane to the students subjected to it, and sometimes even destructive of their sense of humanity. But it is not only because of these moral considerations that we should include such aspects in our teaching, it is also because they increase our relevant knowledge. That is, we cannot really understand a case without understanding its context and its personal impact.⁶ The knowledge afforded by the traditional legal curriculum is, therefore, woefully inadequate to the task of lawyering and also, I believe, to the task of thinking about the law. In other words, there is an epistemological failure here as well as a moral failure.

Indeed, the important point is that the two failures are the same. Epistemology must rest on normative foundations because the interpretation that is an inevitable aspect of acquiring knowledge involves value judgments.⁷ Similarly, our normative systems rest on certain knowledge claims, claims about the nature of reality and of human life.⁸ The sharp division between epistemology and ethics that is central to Enlightenment philosophy is rejected by feminist theory. Once that distinction is recognized as untenable, it becomes clear that the moral failings of authoritarianism and hierarchy in legal education cannot be justified by the need to maintain appropriate conditions for gathering or transferring knowledge. Such moral failings are, instead, themselves both the cause and the result of ignorance.

What would it mean for legal education if we took this feminist epistemological critique seriously? In particular, what would it mean for the Socratic method? The Socratic method is perhaps the clearest example of the influence of mainstream epistemological assumptions in legal education. As it is presently practiced in American law schools, the Socratic method involves a teacher asking a series of questions, ideally to a single student, in an attempt to lead the student down a chain of reasoning either forward, to its conclusions, or backward, to its assumptions. In itself, this might sound

6. This is one of the central insights of the pragmatist movement in legal thought, and of the parallel development in feminist theory. See Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1707-09 (1990); see also Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990).

7. See Williams, *supra* note 1, at 407-09.

8. See MARTHA C. NUSSBAUM, *THE FRAGILITY OF GOODNESS* 1-21 (1986) (describing two different positions on the role of luck and chance in human life and their normative implications).

harmless enough, but it has become the repository for all of the problems of mainstream epistemology. In order to uncover these problems, it is only necessary to ask what one would have to believe about the nature of human knowledge in order to think that this was a good methodology for acquiring or transmitting it.

To begin with, the structure of the exchange—in which the teacher unilaterally controls the direction of inquiry—rests on the assumption that there is a fact-of-the-matter to be discovered and the teacher knows that fact while the student may or may not. This structure suggests that learning is strictly unidirectional: Knowledge flows from the teacher to the student and not the reverse. The fact that the questions in the series are not individualized to the student implies that anyone can come to that knowledge and all can come by the same path: the one mapped out by the teacher's questions. This process also assumes that knowledge is something one finds rather than creates; the teacher is guiding the student to look in the right place. The fact that it is a chain of reasoning that is pursued implies that the primary path to knowledge is through reason, reason of a particular instrumental and analytical kind. And finally, the one-on-one nature of the exchange casts knowledge seeking as a fundamentally individual activity; a teacher may help to point out the path, but it is the mind of the individual knower that is the primary tool.

Feminist theorists along with many others have challenged all of these assumptions. Knowledge can be understood as a social practice deeply embedded in a particular culture. Facts are made, through a process of selection and interpretation, rather than found. One's position in a social framework will have profound effects on what one knows and the path by which one comes to know it, and no social position can claim access to some undistorted truth. Knowledge is socially created, not individually discovered, and it is created through a process that involves emotion as well as reason. Finally, knowledge is a relationship in which the knower and the known can deeply affect each other's identities. As Alison Jagger has said, "The reconstruction of knowledge is inseparable from the reconstruction of ourselves."⁹

If we want to incorporate this new epistemology into legal education, we would, of course, begin by experimenting with new pedagogies, like those Deborah suggested at the end of her paper. But would we need to abandon the Socratic method entirely or is it possible to transform the Socratic method into a process that would be consistent with this alternative epistemology? Can we rid it of its old epistemological baggage without destroying any usefulness it may have?

Let me suggest a possible feminist reconstruction of the Socratic method. If there is anything of value in this method, it is that it was not intended simply to elicit information already in the student's possession. The goal, as

9. Alison Jagger, *Love and Knowledge*, in *GENDER/BODY/KNOWLEDGE*, *supra* note 1, at 145, 164.

I see it, is instead to ask the kind of question which requires the student, in attempting to answer it, to create knowledge she did not have the moment before you asked the question. The question does this because it causes the student to think and feel about the information in her possession in a new way and then to articulate it. Described in this way, I believe that the Socratic method is fully consistent with a feminist epistemology.

Some modifications would, of course, be necessary in order to make the practice match the concept. First, this kind of method does not imply that knowledge is held by the teacher and acquired by the student. Teachers could and should ask questions that might lead to knowledge they do not themselves yet possess (in other words, questions to which they don't know the answers). And students can ask such questions of each other and of their teachers as well. We need to revive the ideal of Socratic *dialogue*, in which knowledge and challenges to knowledge flow in both directions. The nature of the questions should also change. The questions should seek to engage not only rational analysis, but also emotional responses—like empathy and moral outrage—because knowledge creation occurs through all of these capacities.¹⁰ These emotional responses are particularly important because they can function as windows through which we can glimpse reality as seen from the perspective of a social position radically different from our own. The questions also could focus attention on precisely the epistemological issues raised by a feminist approach: For example, what are the normative foundations and implications of certain truth claims in law?

Of course, it is not only questions that can cause this learning experience. Indeed, questions may be a relatively ineffective tool by themselves. I think the increasing use of narrative in law teaching represents another way of providing this opportunity for new thinking and feeling,¹¹ as does the application of knowledge in clinical settings or in simulation and role playing. But I think that a role remains for a series of questions—whether following some other mechanism or standing on their own—that asks the participants to reflect on and articulate their new sense of the subject under discussion. And I believe it is important that those questions, in good Socratic fashion, push both forward to consequences and back to foundations in an effort at understanding.

Indeed, this transformed Socratic method may have a significant role to play in the further development of feminist epistemology. One of the great difficulties facing an epistemology that recognizes the socially constructed nature of knowledge is to find a basis for communication across the cultural divides that separate us from each other. If there is no universally valid, neutral standard to which we can all appeal, how are we to come to agree-

10. See MARTHA C. NUSSBAUM, *LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* 40-42 (1990); Lynne Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987).

11. See Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); see also PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991) (telling stories that evoke emotional responses in an effort to generate greater understanding of the position of an African-American female law professor).

ment given that we all begin from within our own highly contextual, particular positions?¹² Although agreement can be founded on shared experience, we cannot create a situation where we all share the same experiences. Moreover, we often wouldn't want to create such common experiences even if we could, because it would destroy much of the diversity we are learning to value. But we need to forge a foundation for understanding, and even for some degree of agreement, across our differences if we are to mobilize the broad support necessary to make the concrete changes that Judith and Deborah describe.

The kind of dialogue in which participants are brought to see and feel new things about old issues is, I think, one of the most hopeful avenues toward such understanding, and ultimately agreement. By changing each other through such conversations we might be able to create enough common ground to move forward together. One lesson feminists have learned in recent years is that common ground must be created, it is not simply there to be discovered.¹³ It would be ironic and wonderful if the Socratic method, a tool that has been used for so long to shore up an edifice of privilege and oppression, could also be used, in new hands and with a new heart, to build a better future.

12. See Williams, *supra* note 1, at 442-43.

13. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 615 (1990).